

IN THE CIRCUIT COURT OF TENNESSEE AT HAMILTON COUNTY

FULTON BELLOWS, LLC,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY, BY ALB

Defendant.

08 APR 08 PM 3:38

FILED IN OFFICE
PAULA T. THOMPSON, CLERK

DOCKET NO.

08C466

DIVISION

DC

COMPLAINT

Now comes Fulton Bellows, LLC, hereinafter "LLC," by its attorneys, and sues Federal Insurance Company hereinafter "Federal," and for its cause of action says:

1.

The plaintiff is a Delaware limited liability corporation with its headquarters and principle place of business in Knoxville, Tennessee.

2.

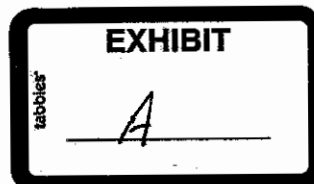
The defendant is one of the Chubb Group of Insurance Companies and is an Indiana corporation with its headquarters and permanent place of business at 251 North Illinois, Suite 1100, Indianapolis, Indiana 46204. Federal is qualified and authorized to do business in the state of Tennessee.

3.

Plaintiff LLC was incorporated on or about July 30, 2004. The intent of the incorporators was to purchase the assets of Fulton Bellows & Components, a Knoxville manufacturing entity that had filed for bankruptcy, and to attempt to enter into the manufacture of bellows. During its existence, Fulton Bellows & Components had a Forefront Portfolio policy that included directors' and officers' (D&O) coverage that it had obtained with Federal through insurance broker Arthur J. Gallagher & Company of Tennessee. The policy was underwritten by Heather Teed, an underwriter for the Chubb Group of Insurance Companies in Tennessee.

4.

Before LLC commenced doing business, representatives of it, including President-to-be Roger Clark, placed an application for D&O insurance coverage and a Forefront Portfolio policy



through Bob Davidson of Arthur J. Gallagher & Company of Tennessee, with Heather Teed. At all times pertinent hereto, Chubb, through Federal, agreed to issue the requested policy.

5.

On August 3, 2004, LLC purchased the assets of Fulton Bellows & Components through the United States Bankruptcy Court for the Eastern District of Tennessee.

6.

On the morning of August 3, 2004, at 9:48 a.m., Heather Teed, sent an e-mail to Bob Davidson of Arthur J. Gallagher & Company agreeing to bind coverage of a Federal policy offering D&O insurance for LLC upon receipt of information about the management team of LLC and a completed application. Bob Davidson provided Heather Teed with a signed application, the answers to her questions, and the information she requested by e-mail on August 3, 2004, at 10:50 a.m. and then again at 11:01 a.m.

7.

Federal issued to LLC a Forefront Portfolio Policy No. 6801-2944, through agent Bob Davidson in Nashville, providing various types of business liability coverage, including Employment Practices Liability coverage. Contrary to the representation of Chubb underwriter Heather Teed, the policy was dated August 6, 2004. The policy was subsequently renewed from August 6, 2005, through August 6, 2006, and then again on August 6, 2006.

8.

The policy issued by Federal to LLC was a claims-made policy, which provided in pertinent part:

THE LIABILITY COVERAGE SECTIONS (WHICHEVER ARE PURCHASED) PROVIDE CLAIMS-MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD," OR IN THE EXTENDED REPORTING PERIOD.

9.

Beginning in August 2004 and continuing through October 2004, LLC began to hire workers for its Knox County facility. Many of these employees had been previously employed by Fulton Bellows & Components.

2

10.

On or about November 23, 2005, Calvin Gaskey and a number of former employees of Fulton Bellows & Components filed suit against Fulton Bellows & Components and LLC in the United States District Court for the Eastern District of Tennessee, Docket No. 3:05CV00540, claiming that they were wrongfully denied employment with LLC and/or discriminated against because of their age. The claim made by Calvin Gaskey and others fell within the Employment Practices Liability sections of the Forefront Portfolio Policy, and LLC gave notice of this claim to Federal and requested that Federal defend it in accordance with the terms and conditions of the policy.

11.

Despite the fact that both LLC and Fulton Bellows & Components had valid Forefront Portfolio policies issued by Federal that provided coverage for Employment Practices Liability coverage, Federal arbitrarily and capriciously refused to honor its contractual obligation to defend LLC.

12.

LLC hired counsel to defend the lawsuit filed against it by Calvin Gaskey and the other disgruntled workers of the former Fulton Bellows & Components. LLC was granted a summary judgment in that case on March 20, 2007. In the process, LLC incurred attorneys' fees of \$175,000.

13.

At all times pertinent herein, Federal has failed and refused to defend LLC and/or reimburse it for the defense costs it incurred in clear violation of the policy language. X of the policy provides that if a claim consists of both losses covered by the policy and losses that are not covered by the policy then 100 percent of defense costs incurred by the insured will be considered a covered loss. Despite the fact that Tennessee law provides that if one allegation in a complaint is covered the duty to defend is triggered, Federal refused to defend LLC in violation of its contract to do so. LLC sues Federal for \$175,000 damages for the costs of defending the baseless Gaskey suit.

14.

Federal's refusal to defend LLC and/or to indemnify it for the attorneys' fees incurred in its own defense was arbitrary, capricious, and in bad faith. LLC sues Federal for the 25 percent bad-faith penalty codified at T.C.A. § 56-7-105.

15.

In addition, LLC believes and alleges that it is entitled to 10 percent prejudgment interest. LLC sues Federal for prejudgment interest of 10 percent on its \$175,000 loss.

16.

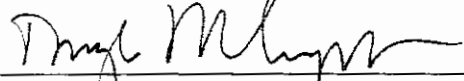
In addition, LLC believes and alleges that the claims handling practices of Federal, as indicated by its arbitrary and capricious denial of LLC's claim, is in violation of the Tennessee Consumer Protection Act codified at T.C.A. § 47-18-109 and entitles LLC to recover treble damages and its attorneys' fees. LLC sues Federal for \$525,000 and the attorneys' fees it incurs in the prosecution of this case.

Wherefore, LLC prays:

1. That proper process issue and be served upon defendant Federal and requiring it to answer within the time required by law;
2. That LLC be awarded \$175,000 for the costs it incurred in defense of the underlying suit brought by Calvin Gaskey, et al, in the United States District Court for the Eastern District of Tennessee, Northern Division, No. 3:05-cv-00540;
3. That LLC have and recover the 25 percent bad-faith penalty in the amount of \$43,750 for Federal's bad-faith handling of this claim;
4. That LLC be awarded treble damages in the amount of \$525,000 plus attorneys' fees for Federal's claims-handling practices in violation of the Tennessee Consumer Protection Act; and
5. That LLC have such other general relief to which it may be entitled.

CAMPBELL & CAMPBELL

By:



Douglas M. Campbell -- BPR No. 005634

Counsel for Plaintiff

735 Broad Street, Suite 1200

Chattanooga, TN 37402-1835

Telephone 423-266-1108

Facsimile 423-266-8222